IN THE HIGH COURT OF JUDICTURE AT MADRAS

DATED : 24-03-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.146 OF 2003

S.P. Jaisankar,
S/o.S. Perumal .. Petitioner

Vs.

1. The District Collector and
Inspector of Panchayats,
Thuthukudi District.

2. Assistant Director of Panchayat,
Thuthukudi District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for records of the 1st respondent in order No.Vu.Ni.8/3655/2002 dated 15.11.2002 removing the petitioner from the post of President of Maniyachi Village Panchayat and the notification in the Tamil Nadu Government Gazette No.46 vide No.VI(2)/360/2002 dated 27.11.2002 and quash the same.

For Petitioner : Mr.P. Rajendran

For Respondents : Mr.V. Subbarayan
Special Govt. Pleader

J U D G M E N T

The facts giving rise to filing of the present writ petition are as follows :-

The petitioner was elected as the President of Maniyachi Village Panchayat in the year 1996 and subsequently he was re-elected in the year 2001 and took charge on 25.10.2001. The first respondent, namely, the District Collector and Inspector of Panchayats, issued show cause notice dated 7.6.2002 to the petitioner purporting to be under Section 94 and Section 205(1)(a)(b) of the Tamil Nadu Panchayats Act (hereinafter referred to as "the Act") to submit his explanation regarding various allegations made. After explanation was furnished by the petitioner, the District Collector placed the matter before the Panchayat as envisaged under Section 205 of the Act. In such meeting, three members of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Panchayat were against the resolution, whereas three members supported the resolution. Thereafter, the Collector by order dated 15.11.2002 came to the conclusion that Allegation Nos.1 to 6 had been proved and Allegation No.7 had been partly proved and the reasons given for the irregularities were not acceptable. It was concluded :-

> "Hence, Mr.S.P. Jai Shankar, President, Maniyachi Panchayat has committed several irregularities against the interest of the public and caused financial loss of Rs.95,739/- to the Panchayat. Therefore in exercise of the power conferred under Section 205 (11) of the Tamil Nadu Panchayats Act, 1994 it is hereby notified that Mr.S.P. Jai Shankar, President, Maniyachi Panchayat is removed in public interest. This notification of removal will be published in the Tamil Nadu Government Gazette under Section 262 (1) of the Tamil Nadu Panchayats Act, 1994 and it will take effect from the date of serving to the Panchayat President as per procedures."

The present writ petition has been filed against the aforesaid order passed by the Collector.

2. In the writ petition, the petitioner has sought to assail the order of the Collector. One of the main ground taken is to the effect that most of the allegations related to the period prior to 25.10.2001 and since the said term was over and the petitioner become President for the second term with effect from 25.10.2001, no order could have been passed on the basis of the allegations related to his earlier term. It has been further stated in this connection that the petitioner was allowed to contest the election only after clearance had been given after auditing the Panchayat accounts. The other contention raised by the petitioner is to the effect that three members who voted in favour of removal of the petitioner had already been ceased to be the members of the Panchayat as they had not attended three consecutive Panchayat meetings held on 28.12.2001, 22.3.2002 and 24.5.2002 by virtue of Section 38(j) of the Act. It is therefore submitted that by the date when the resolution was passed, i.e., 26.7.2002, these persons were ceased to be the members and, therefore, the Collector should have rejected the opinion expressed by those three members.

3. A counter has been filed by the respondents indicating that on the basis of available records and the report of the Tahsildar, the Collector initiated proceedings in accordance with Section 205 of the Act. In the counter affidavit, various allegations made against the petitioner and the explanation furnished by him have been summarised and it has been stated that the Collector had taken the decision on the basis of available materials. Regarding the alleged disqualification of three members, it is stated that the petitioner had not mentioned about any action taken by him for disqualifying such persons under Section 38(j) of the Act and such plea was taken for the first time in the affidavit. In the counter

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

affidavit it is further indicated that as per Section 205(12) of the Act, the petitioner had the alternative remedy of preferring an appeal before the Government and he has not availed such appellate remedy available under the statute.

4. The petitioner has tried to demolish the conclusion of the Collector regarding factual aspects by producing several documents. However, while deciding a writ under Article 226 of the Constitution, the High Court is not expected to reconsider the factual conclusions. If the petitioner intended to challenge the factual conclusions on the basis of evidence or materials, it would have been more appropriate for him to avail of the alternative remedy available under Section 205(12) of the Act.

5. The only other legal contention relates to disqualification of three members. Section 38(j) of the Act is relevant for the aforesaid purpose. The provisions contained in Section 38(j), 39 and 41 being relevant, are extracted hereunder:

> 38. Disqualification of members.- Subject to the provision of Section 41, a member shall cease to hold office as such, if he -
>
> (a) to (i) ...
>
> (j) absents himself from the meetings of the panchayat for a period of three consecutive months reckoned from the date of the commencement of his term of office, or of the last meeting which he attended, or of his restoration to office as member under sub-section (1) of section 39, as the case may be, or if within the said period, less than three meetings have been held, absents himself from the three consecutive meetings held after the said date:
>
> Provided that no meeting from which a member absented himself shall be counted against him under his clause if -
>
> (i) due notice of that meeting was not given to him; or
>
> (ii) the meeting was held after giving shorter notice than that prescribed for an ordinary meeting; or
>
> (iii) the meeting was held on a requisition of members.
>
> 39. Restoration of members to office. -
>
> (1) Where a person ceases to be a member under section 35 or clause (a) or clause (b) of section 38, such person shall be restored to office for such portion of the period for which such person was elected, as may remain unexpired at the date of such restoration, if and when the conviction or sentence is annulled

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

on appeal or revision; and any person elected to fill the vacancy in the interim, shall on such restoration, vacate office.

(2) Where a person ceases to be a member under clause (j) of section 38, the executive authority or the commissioner or the secretary as the case may be, shall, at once intimate the fact in writing to such person and report the same to the panchayat concerned at its next meeting. If such person applies for restoration suo motu to the panchayat concerned on or before the date of its next meeting or within fifteen days of the receipt by him of such intimation, such panchayat may at the meeting next after the receipt of such application restore him to the office of member:

Provided that a member shall not be restored more than twice during his term of office."

41. Authority to decide questions of disqualification of members. - (1) Whenever it is alleged that any person who has been elected as a member of a panchayat is not qualified or has become disqualified under sections 33, 35, 37, 38 and 40, the executive authority or the commissioner or the secretary as the case may be, shall, by notice in writing inform such member of the allegation and place the matter at the next meeting of the panchayat concerned. If before the date of the expiry of two months from the date of receipt of such notice, such member does not apply to the prescribed judicial authority under sub-section (2), he shall become not qualified or disqualified from such date of expiry of the said two months.

(2) The executive authority or the commissioner or the secretary, as the case may be, if so directed by the panchayat or by the Tamil Nadu State Election Commissioner, shall, or any such member or any other member may apply to the prescribed judicial authority whose decision on such allegation shall be final.

(3) Where an application has been made under sub-section (2), the member shall, pending on such application be entitled to act as if he is qualified or was not disqualified.

(4) Nothing contained in this section shall be deemed to affect the provisions of section 39."

6. It is apparent that the provisions contained in Section 38 are subject to the provisions contained in Section 41 of the Act. Therefore, it was required to pursue the matter as contemplated in Section 41 by issuing notice to the concerned members regarding the absence of the member in three consecutive meetings. If such a notice would have been given, it would have been open to such members to raise a dispute before

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the Civil Court as contemplated under Section 41(2) of the Act. Moreover, if a notice would have been served, such a member could have sought for continuance as contemplated in Section 39(1) and (2) of the Act. This having not been done, it cannot be said that those three members automatically ceased to be the members of the Panchayat on the allegation that they had not attended three consecutive meetings. This contention of the petitioner is therefore not acceptable.

7. In view of the aforesaid conclusion, I do not find any scope to interfere with the order passed by the Collector and the writ petition is accordingly dismissed. No costs. WP MP 159/03 is also dismissed.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Collector and
   Inspector of Panchayats,
   Thuthukudi District.

2. Assistant Director of Panchayat,
   Thuthukudi District.

+ 1 cc to Mr P.Rajendran, Advocate SR 14792

SSV(CO)
CGS/19.4

JUDGMENT IN WP.NO.146/2003

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/